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II	*Findings or opinions of the courts below*—the opinions of the Supreme Court of Florida and the District Court of Appeal of Florida, Fourth District, have been previously submitted in the Appendix to the Petition for Writ of Certiorari filed in this cause.	
III	*The judgment, order and decision in question* is the opinion of the Florida Supreme Court which was previously submitted with the Appendix to the Petition for Writ of Certiorari filed in this Court. The Florida Supreme Court's opinion is located at pages 1A through 4A of said Appendix.	

RELEVANT DOCKET ENTRIES

1. Information filed February 17, 1969 (page 1 of record in Fourth District Court of Appeal).

2. Waiver of arraignment and plea of not guilty entered February 28, 1969 (page 6 of record on appeal).

3. Motion to suppress evidence obtained through unlawful search and seizure dated February 28, 1969 (page 8 of record on appeal).

4. April 15, 1969, order denying motion to suppress evidence seized without warrant (page 19 of record on appeal).

5. Relevant portions of deposition of Police Officer Paul R. Smith filed April 16, 1969 (commencing at page 103 of record on appeal).

6. Transcript of March 10, 1969, hearing filed April 22, 1969 (commencing at page 171 of record on appeal).

7. Order filed October 28, 1969, withholding adjudication of guilt and placing defendant on probation (page 283 of record on appeal).

8. Affidavit of insolvency and order filed October 28, 1969 (page 284 of record on appeal).

9. Notice of appeal filed October 28, 1969 (page 286 of record on appeal).

[103]

IN THE COURT OF RECORD IN
AND FOR BREVARD COUNTY, FLORIDA

NO. F69-33

STATE OF FLORIDA

Plaintiff,

vs.

JAMES E. GUSTAFSON

Indigent Defendant.

[Filed April 16, 1969]

The deposition of PAUL R. SMITH, taken before Emilie E. Richards, C.S.R., Notary Public in and for the State of Florida at Large at the Brevard County Courthouse, Titusville, Florida, on the 13th day of March, 1969.

APPEARANCES:

Mr. Dan Ciener, Assistant County Solicitor, Brevard County, Florida, on behalf of the State.

Mr. James M. Russ, Attorney at Law, Orlando, Florida on behalf of Defendant.

[104] THEREUPON

PAUL R. SMITH,

being duly sworn was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Russ) Tell me who you are and your occupation.

A Paul R. Smith, Police Officer, City of Eau Gallie.

* * *

Q Were you working on the night encompassing Saturday, the 11th of January and Sunday, the 12th of January of this year as a police officer?

A Yes, sir.

Q Did you have occasion to meet a man by the name of Gustafson?

A Yes, sir.

* * *

[117] Q To the best of your knowledge did any member of the Eau Gallie Police Department take him to a City or State Judge on January 12th?

A No, sir.

Q To your knowledge did any member take him to a City or State Judge for arraignment on Monday, the 13th of January?

A I don't know.

Q How about on the 14th?

A I don't know when he was taken.

Q You didn't take him?

A No, sir.

Q Did you have a warrant for his arrest?

A Did I, no, sir.

Q Did you make any effort to contact a Judge in connection with Mr. Gustafson's arrest?

A No, sir.

Q You had a flashing blue light on your Police Car, didn't you?

A Yes, sir, on the dash.

Q Did you use that in connection with stopping the white Cadillac?

[118] A Yes, sir.

Q You had no difficulty in stopping the Cadillac once you turned the blue light on?

A No, sir.

Q As I understand the Cadillac was traveling south on Babcock Street at the time you turned on your blue light?

A Yes, sir.

Q How far behind the white Cadillac were you at that time?

A Maybe 25 or 30 feet.

Q And where were you in relation to the corner of Babcock and Ultcht when you turned on the flashing blue light?

A Well, I would say about a little less than a city block from the corner of Ultcht.

Q Within that city block the Cadillac turned off to the right into the parking of the shopping center?

A Yes, sir.

Q And you pulled in behind him?
A Yes, sir.

Q Did you get out of your car?
A Yes, sir.

Q You were armed?
A Yes, sir.

Q Did you have a flashlight in your hand?
A I don't recall if I had the flashlight or not.

Q Do you have one in the car?
[119] A Yes, sir.

Q Describe it for me.
A It is a five cell flashlight.

Q How long it it?
A 10 or 12 inches.

Q Would it be more like 18 inches?
A I really don't know, 12 inches, 15 inches, it was a five cell.

Q Do you always carry your flashlight with you?
A Yes, sir.

Q Did you have to order the driver to get out of the Cadillac?
A Yes, sir.

Q Tell me where you were parked in relation to the Cadillac.
A I pulled directly in behind the Cadillac.

Q Directly behind it?
A Yes, sir.

Q Did you get out of your car on the driver's side?
A Yes, sir.

Q And you walked around to the driver's side of the Cadillac?
A I walked up to it.

Q Did you have your flashing blue light on?
A Yes, sir.

Q Were your headlights on?
[120] A Yes, sir.

Q Was your radio on?
A My radio stays on.

Q Was your engine turning over?
A It was running.

Q Did you have your gun pulled?
A No, sir.

Q Did you have your flashlight in your hand?
A I don't recall if I did or not.

Q Did you go to the driver's side of the Cadillac?
A Yes, sir.

Q Did you open the door?
A No, sir.

Q Did you touch the car?
A Did I touch it, no, sir.

Q Were the windows up or down?
A I don't recall.

Q Did you speak to the occupants of the car?
A He may have run it down.

Q Did you speak to the occupants of the car?
A I spoke to the driver, yes.

Q What did you say?
A I asked him to get out.

Q Do you know him to be a man by the name of James Gustafson now?
[121] A No, sir.

Q You don't know his name now?
A I know it now but I didn't at the time.

Q If you will listen to the question carefully, and answer it carefully I think we will come closer to the truth and get out earlier. You know the driver by the name of James Gustafson now?
A Yes, sir, I do.

Q When you told the driver of the car to get out what did the driver do?
A He got out.

Q Was the Cadillac running?
A I don't recall if it was running or not.

Q Were the headlights on or off?
A I don't recall.

Q How many people were in the car?
A Two.

Q Were there two persons in the front seat?
A Yes, sir.

Q One was to the right of the driver?
A Yes.

Q Did he appear to be a Caucasian male?
A Yes, sir.

Q Do you know him now by the name of Michael Moody?
A Yes, sir.

[122] Q Did James Gustafson appear to be a young Caucasian male?
A Yes, sir.

Q How was Mr. Gustafson dressed?
A I believe he had on a brownish jacket, sports jacket and dungarees.

Q Did he have a shirt on?
A Yes, sir.

Q What kind?
A I don't recall.

Q Did he have a tie on?

A I don't believe he did.

Q Were his clothes orderly or disheveled?
A They were very orderly.

Q Was his hair long or short?
A I believe it was long.

Q Was he clean shaven or did he have a beard?
A I believe he had a beard.

Q All over his face?
A I don't recall whether it was all over his face.

* * *

[123] Q As a matter of personal judgment do you believe that anyone who has got a mustache automatically needs a shave?

A No, sir.

Q Anyone that has a goatee automatically needs a shave.

A No, sir.

Q Do you agree with me that a man who has a day's beard all over his face, under his chin and nose, does need a shave?

A I would say so.

Q Using words in that line would this man need a shave?

A Sir, I don't know if it was all over his face or if it was a goatee, I don't recall, I don't recall if it was a goatee or mustache.

Q I am trying to ascertain if there was anything about the hair on his face that led you to believe he was unkept, disheveled, unclean, the vagrant type?
[124] A No, sir.

Q The hippie type?
A No, sir.

Q Did the man respond to your direction to get out of the car?
A Yes, sir.

Q Did he have any trouble getting out?
A No, sir.

Q Was he slow in getting out of the car?
A No, sir, I don't believe so.

Q Were you standing next to the door when he got out?
A Not next to the door, he opened the door and got out.

Q How far away were you?
A Maybe three or four feet.

Q Did you open the door or did he open the door?
A He opened the door.

Q When he got out of the car did he stand up?
A Yes, sir.

Q Did he have any trouble standing up?
A No, sir.

Q Did he say anything to you?
A No, sir, not at that time until I asked for hi license.

Q Did he appear to be frightened?
A No, sir.

Q Never?
A No, sir.

[125] Q Upset?
A No, sir.

Q What was the first thing you said?
A I asked for his driver's license.

Q Did he make any response to your request?
A Yes, sir.

Q What did he say?
A He said he didn't have a driver's license.

Q What did you do after that?
A I said you are under arrest for no driver's license.

Q Did you say anything further at that point in time?
A No, sir.

Q Did he make any response to you?
A If I am not mistaken he said his driver's license was at F.I.T.

Q What is F.I.T.?
A Florida Institute of Technology.

Q Is that an institution of higher education level in Brevard County?

A Yes, sir.

Q Did that man appear to be qualified that he could be a student in that institution?

A Yes, sir.

Q Would you say he was about 20 years old?

A Somewhere like that, yes, sir.

[126] Q Did you ask him if he had a registration slip for the car?

A No, sir, I did not.

Q Did you ask him if he had any other identification?

A No, sir.

Q Did you advise him that you were going to take him down to the Eau Gallie City Jail?

A Yes, sir.

Q Did you observe him to go around the Cadillac to the passenger side?

A No, sir.

Q Did you observe him open the door on the passenger side?

A No, sir.

Q Did you observe him go in the glove compartment of the Cadillac?

A No, sir.

Q Do you recall him telling you that he did not have with him the registration for the car?

A No, sir, I do not.

Q Do you recall him telling you that he had just purchased the car from a lady?

A I do.

Q Do you recall him telling you that he had the lady's name in the glove compartment?

A Yes, sir.

[127] Q Do you recall him looking around the glove compartment for the paper or card that had the lady's name?

A No, sir, I do not.

Q Did you ever tell Mr. Gustafson that he was stopped or pulled over by you because he was driving all over the road and because when he saw you he pulled off and went through the alley?

A Repeat that.

MR. RUSS: Would you read the question.

(Thereupon the foregoing question was read.)

A Yes, sir.

Q That was the basis for turning on the blue light wasn't it?

A Yes, it was.

Q Had you stopped any other cars that night with the blue light?

A I believe I had, sir.

Q How many?

A Two or three possibly.

* * *

[128] Q Are you out on patrol like this every night?

A For one month, we change every month, when I am on my month I am out.

Q On the months that you are on days are you out on patrol during the daytime?

A Yes, sir, I would say two-thirds of the time.

Q Tell me this, why did you stop these other cars that particular Saturday night?

[129] A I believe, if I am not mistaken, I wrote two corrections.

Q What is this?

A Tail light, headlights, brake lights and so forth.

Q When you write up corrections do you turn them in?

A Yes, sir.

Q Who do they go to?

A Captain Yeager.

Q Who is he?

A He is Captain of the Patrol Division.

Q Is there a follow up to ascertain if these people get the correction done?
A I don't know.

Q Is there a form you use to write up these corrections?
A Yes, sir.

Q You give one part to the person stopped?
A Yes, sir.

Q And you turn the other part into Captain Yeager?
A Yes, sir.

Q Do you keep any part for your own use?
A No, sir.

Q Did you stop anybody that particular night for any reason other than to give correction slips?
A I don't believe so.

Q In the instance of people stopped for correction slips do you check their driver's license?
[130] A Yes, sir.

Q Were they produced?
A Yes, if they have it they do.

Q Were they produced this particular night?
A Yes, sir.

* * *

[133] Q Going back to the night in question, the two people you stopped, these people had faulty equipment?
A I believe they did.

Q Either their tail lights were not working or their headlights were out or something like that?
A Yes, sir.

Q Did you arrest either of these people?
A No, sir.

Q Did you take either of these people down to jail?
A No, sir.

Q So far as you know is it illegal and against the law to operate a motor vehicle with bad headlights?
A Yes, sir.

Q Is it against the law to operate a motor vehicle with faulty tail lights?
[134] A Yes, sir.

Q A person that does that is subject to being arrested?
A They can be.

Q And taken to jail?
A Yes, sir.

Q And required to post bail?
A Yes, sir.

Q And submit to search?
A Yes, sir, if they are arrested.

Q Before you stopped the white Cadillac you had observed it to some extent going from one lane to another, is that right?

A Yes, sir.

Q Tell me again where it was that the Cadillac caught your attention.

A North of Ballard Drive and Harbour City Boulevard, which is U.S. 1.

Q How far is the intersection of U.S. 1 and Ballard Drive and U.S. 1 and Ultcht?

A About three-quarters of a mile, maybe.

Q Were you traveling north or south when the car caught your attention?

A Traveling south.

Q At that time when you first made contact was the Cadillac driving along in front of you?

A Yes, sir.

[135] Q Was it violating the speed law?

A No, sir.

Q I believe you said the other day that there was no particular traffic parked in the right hand parking lane?

A No, sir.

• • •

[137] Q As I understand you were traveling south and came behind this white Cadillac?

A Yes, sir.

Q And I assume, being a police officer, you were not violating the speed limit.

A No, sir.

Q Therefore if you were not violating it the white Cadillac was not violating the speed limit?

A No, sir.

Q How far did you stay behind the white Cadillac before it turned off of U.S. 1?

A About three-quarters of a city block, going through the intersection of Ballard Drive and U.S. 1 and turned right beside the Winn-Dixie Food Store.

* * *

Q During the course of the three-fourths of the city block that you were behind the Cadillac I believe you testified [138] you observed it to weave.

A Yes, sir.

Q It was essentially in the center of the lanes, two of which being the proper traffic lanes and the third lane on the right the parking lane?

A Yes, sir.

Q You observed the car to weave over the center line into both adjacent lanes?

A I believe I said across the center line into the passing lane.

Q You said it was possibly no more than the width of the tire?

A I don't know, I said it was probably half the car.

Q All you know is it went over the center line?

A Yes, sir.

Q You don't know how far?

A No, sir.

Q It could have been a little bit?
A Yes, sir.

Q And this drew your attention to the Cadillac?
A Yes, sir.

Q I believe you said as it went down U.S. 1 before it turned right the occupants turned around and looked at you?
A Yes, sir.

Q And you observed them to be young Caucasian males?
[139] A Yes, sir.

Q And the driver at least had long hair?
A I don't believe I said he had long hair I said two white males.

Q He did have long hair?
A Yes, sir.

Q Did that turn your attention to the car?
A The weaving there?

Q The whole thing, the driver, the weaving, the hair?
A I didn't know who was in the car but two white males.

Q Did they appear to be young?
A Yes, sir.

Q Did you decide then to stop the car?
A At that point?

Q Just as you were going down U.S. 1?
A Yes, sir.

Q You thought you would stop and check it out?
A Yes, sir.

Q Based on the weaving?
A Yes, sir.

Q And based on the appearance of the occupants?
A Not on the appearance, no, sir.

Q Would you have stopped that car if you had recognized the occupants of the car?
A If I had recognized them, no, sir, if it hadn't been [140] weaving I wouldn't have stopped it.

Q Assuming a car was moving on the same course that you saw this car and you recognized the occupants would you stop the car?
A No, sir.

Q Assume you observed the weaving there and it was 2 o'clock in the afternoon with the same occupants in the car would you have stopped the car?
A I would have stopped the car if it was weaving.

Q Didn't you tell me a minute ago you wouldn't have stopped the car if you recognized the occupants?
A I didn't recognize the occupants.

Q I know that, I am trying to ask you if you would have stopped the car if you had known the occupants. Say, for example, the two faces that turned around and you

recognized the driver as being Robert Cotron and the man next to him as Captain McCarthy would you have stopped the car?

A No, sir, that's because—

Q You would have known the occupants?
A Right.

Q And the same thing that we have been talking about if they had turned around and it had been the faces of Cecil Rosier and Joe Cowart, you wouldn't have stopped the car?

A I would have if it was weaving.

Q Do you stop every car that crosses the center line?
[141] A Weaving into the right side, I know I checked my records the other day and I said it went to the right side in the parking lane.

Q Didn't you testify it didn't go in the parking lane?
A No, sir, I did not.

Q You don't know that that car went over that line as much as a tire width or half of a tire width?

A No, sir, the only thing I know is it went over the center line.

Q That is not a crime, is it?
A Yes, sir.

Q It is?
A Careless driving by weaving, yes, sir.

Q You arrested him for careless driving by weaving?

A No, sir, I did not.

Q Tell me why you didn't.
A Because I stop cars—

Q No, this car, you told me that you were going to stop this car regardless if Robert Cotron was driving it or Joe Cowart was driving it, it made no difference you were going to stop this car.
A For the weaving.

Q Ultimately you did stop this car?
A Yes, sir.

Q Did you charge him for careless driving by weaving?
[142] A No, sir.

Q Tell me why.
A I didn't, he could have been sleepy, or drinking.

Q You mean to say that it's a crime—
A If I stop them if they are sleepy I have them get coffee and talk to them and then they are gone.

Q You don't charge them then?
A No, sir, I don't.

Q Did you tell Judge Cowart the other day under oath that as far as you were concerned there wasn't enough to make a charge of careless driving by weaving.
A I did.

Q You are telling me that you were going to stop this car because of this and at the same time you are telling me there was not enough there to place the charge against the driver.

A There was not enough weaving in my opinion to book him on careless driving.

Q Tell me how do you justify stopping these people and yet there is not enough there to place a charge?

A If a man crosses the center line and comes back to the right continually he is booked for careless driving by me.

Q That was not the case?

A No, sir.

Q You observed the car going for three-quarters of a block and turning off of Ballard to Laurie all right?

[143] A Yes, sir.

Q They didn't violate any traffic law?

A No, sir.

Q Then they continued traveling south on Babcock at Laurie?

A Yes, sir.

Q At this time you were right behind him?

A Maybe 200 feet behind him.

Q To this point in time you hadn't turned on your blue light?

A I had not.

Q You traveled from Laurie down passed Circle Avenue?

A Yes, sir.

Q Did you observe a police car at that intersection?

A I did not.

Q Did you see Officer Levy anywhere in a police car that night?

A Yes, sir, I did.

Q Before you stopped the Cadillac?

A No, sir, I did not.

Q Did you make a radio transmission to Officer Levy before you stopped the Cadillac?

A I did.

Q What did you tell him?

A I asked him if he saw a white Cadillac traveling south [144] on Babcock.

Q Did you see Officer Levy at that time?

A No, sir.

Q Did you know where he was?

A No, sir.

Q Why did you ask him did he see the white Cadillac?

A I knew he was supposed to be on Babcock Street checking doors but where I didn't know.

Q Did you call the dispatcher at that time?

A Yes, sir.

Q What did you tell him?

A I told him I was going to stop a car such and such a tag number and location.

Q At the time you made the transmission you felt the car was trying to elude you?

A No.

Q At the time you made the radio transmission?

A No, sir, I made the radio transmission on Babcock.

Q You had come out of the alley way between U.S. 1 and Babcock?

A Yes, sir, I come off the alley way at Babcock and Laurie.

Q That's between U.S. 1 and Babcock?

A Yes, sir.

Q That is what I asked you.

[145] A Yes, sir.

Q At that point in time did you believe that this car in coming off of U.S. 1 through the alley way to Babcock was trying to elude you?

A Yes, sir, that's what I thought, he was trying to elude me.

Q And that made you suspicious?

A Naturally.

Q So you concluded you would stop the car?

A No, sir, I stopped the car because of the weaving.

Q The fact that the car went through the alley had nothing to do with stopping the car?

A No, sir.

Q Why didn't you turn the blue light on between the point when you first saw it on U.S. 1 and the point where it turned off of U.S. 1?

A Why didn't I, I didn't feel like I should, I thought I would wait until I got on Babcock.

Q All of the weaving took place on U.S. 1?

A Yes, sir.

Q There was no weaving on Babcock?

A No, sir.

Q And you knew that Ultcht Street was ahead of you?

A Yes, sir.

Q And you knew that was the city limits?

[146] A Yes, sir.

Q And you knew you had no arrest power except in hot pursuit beyond the city limits?

A I didn't, I can follow a car into Melbourne and arrest it.

Q On hot pursuit?

A Yes, sir.

Q This has to be for an offense committed in Eau Gallie?

A Yes, sir.

Q And did you observe any offense committed in Eau Gallie?

A Yes, sir, I did.

Q What was that?

A The weaving.

Q But you told me at least four or five times this afternoon the weaving was not sufficient to constitute the offense of rackless driving.

A Right.

Q The mere weaving back and forth doesn't constitute an offense?

A Weaving back and forth, yes, sir, it does.

Q Did you see the actual offense of careless driving that night by this Cadillac or didn't you?

A There was not enough weaving for careless driving in my opinion.

Q You didn't see an offense committed by the driver of the [147] Cadillac in Eau Gallie?

A Yes, sir, I did, careless driving by weaving.

Q Didn't you just say you didn't see this happen—

A The weaving took place in the city limits in Eau Gallie and it could have been a charge of careless driving by weaving.

Q Did you see enough weaving to constitute a charge of careless driving by weaving?

A I did.

Q Why didn't you charge careless driving by weaving?

A I didn't want to.

Q Didn't you tell the Judge that you didn't see enough weaving to constitute an offense?

A I told him in my opinion that it was not enough weaving to constitute a careless driving by weaving charge.

Q You stated that you determined to stop him because of the weaving?

A Yes, sir.

Q But yet you didn't arrest him or charge him with careless driving by weaving because there was not enough evidence?

A In my opinion not enough weaving?

Q What I just said is that right?

A To my opinion there wasn't enough weaving, sir.

MR. RUSS: Read my question back.

(Thereupon the Court Reporter read the following question. "But yet you didn't arrest him or charge him with careless [148] driving by weaving because there was not enough evidence.")

A No, sir, there could have been evidence but I didn't charge him.

Q Do you know the difference between evidence and charge?

A No, sir.

Q When you accuse somebody of an offense or a crime what is that?

A When you accuse somebody of an offense what is that?

Q What is that?

A That is evidence for the case.

Q Okay.

A It's a charge but you got to prove it.

Q Is it a charge or evidence?

A It is a charge the same as you accuse somebody.

Q And when you see somebody doing something, what is that?

A It is a crime.

Q I am sitting over here in this chair, is this a crime?

A It is according to what you are doing.

Q When you see somebody doing something what is that?

A Evidence that they are doing something I guess.

Q You say that you didn't see Mr. Gustafson go around to the glove compartment, is that your testimony?

A Yes.

Q You are sure about that?

A Yes.

[149] Q Did you ask him for any identification?

A Other than his driver's license, no, sir.

Q After you asked him for his driver's license, did you observe him rummaging around in his pockets?

A No, sir.

Q Did you observe him put his hands in his pockets at all?

A I don't recall, sir.

Q Think hard.

A I don't believe so.

Q Think hard and give me a good honest answer.

A To the best of my recollection I don't believe so.

Q Does it sooth your conscience when you fall back on "I don't remember", "I don't recall"?

MR. CIENER: I object to that.

Q Did you see Mr. Gustafson put his hands in his pockets after you asked for his driver's license?

A No, sir.

Q Did you specifically tell him, "Mr. Gustafson, you are under arrest for not having a valid driver's license in your possession."

A Not in possession, no driver's license.

Q Is that what you told him?

A Yes, sir.

Q Tell me what you told him?

A I told him you are under arrest for no driver's license.

[150] Q When in point of time did you tell him that?
A When he told me he didn't have a driver's license.

Q Is this when he told you that the driver's license was back at the University?
A After I placed him under arrest, yes, sir, he said it was at the F.I.T. school.

Q Did you make any effort to verify the license back at the school?
A No, sir.

Q How far was the school from the point of arrest?
A I have never been to the school.

* * *

Q Did you know it was within the city of Melbourne?
[151] A I heard it was in the City of Melbourne off of Babcock Street.

Q At the point of arrest you were a matter of maybe 100 feet of being in Melbourne?
A 100 to 150 feet.

Q You were already on Babcock Street?
A In J. M. Fields parking lot.

Q Off of Babcock Street?
A Yes, sir.

Q How many feet off?
A How many feet off?

Q It was not more than 50 feet off of Babcock was it?
A Probably not any more.

Q Tell me this, tell me who the last person was that you took down to the Eau Gallie jail for not having a driver's license before the Gustafson arrest?

A I couldn't tell you who it was.

Q Or when it was?

A No, sir.

Q Tell me during the calendar year 1968, your best approximation, as to the number of people you took in custody and took to the Eau Gallie jail because they didn't have a valid driver's license in their possession.

A In '58?

Q In '68.

[152] A I would say around 20 or 25, that's an approximation.

Q You took all these people down in your police car?

A Not all of them now.

Q No?

A No, sir.

Q How many did you take in your police car?

A I would say an average of 10 or 15.

Q Out of the 25?

A Out of 25.

Q Did you search all the 25 that you arrested for not having a driver's license in their possession?

A If they go in my patrol car I do.

Q You told us the other day that your search of Mr. Gustafson consisted of patting him down on the outside?

A Outside and inside, I checked the belt, the shirt pockets and all around the belt, completely around inside.

Q Did it involve putting your hands in Mr. Gustafson's pockets?

A No, sir.

Q After you patted Mr. Gustafson down you put your hands in his pockets?

A His coat pocket.

Q Which coat pocket?

A The left.

Q Why did you put your hand in his coat pocket?

[158] A I took a package of cigarettes out.

Q I want to know why you put your hand in his pocket?

A To see what he had in his pocket and remove it.

Q Did you put your hand in his right coat pocket?

A No, sir.

Q Did you put your hand in his shirt pocket?

A No, sir.

Q Did you put your hands in his right trouser pocket?

A No, sir.

Q Did you put your hands in his left trouser pocket?

A No, sir.

Q Did you put your hands in his left back pocket?
A No, sir.

Q The right back pocket?
A No, sir.

Q Did you put your hands in the inside coat pocket, the vest pocket?
A No.

Q Did you remove a box that you said was Benson-Hedges out of his left pocket?
A Yes, sir.

* * *

[155] Q When you tell me that he had no valid driver's license on his person did you consider the statement that he made to you in reaching this conclusion?
A Read that again.

MR. RUSS: Would you read the question.

(Thereupon the Court Reporter read the foregoing question.)

A Yes, as far as I know he told me he had no driver's license.

Q You considered that statement in placing him under arrest for having no valid driver's license?
A Yes, sir.

Q You didn't go through his pockets and determine whether or not he had a driver's license in his pocket?
A I didn't.

Q You didn't go through the car to see if he had a valid driver's license in the car?

A No, I did not.

Q You had observed him driving the car?

[156] A Yes.

Q And you asked him to produce a driver's license?

A I did.

Q And he told you he didn't have it with him?

A He said he didn't have a driver's license.

Q He said he didn't have a driver's license?

A Right.

Q And it was based on that that you place him under arrest?

A Yes, sir.

Q How far is it from Laurie Street and Ultcht along Babcock?

A I would say approximately from Laurie to Ultcht on Babcock is about one-half a mile, I believe.

Q Why did you allow that Cadillac to drive a half a mile down Babcock before you pulled it over?

A So he would pull up in the J. M. Fields parking lot.

Q Any other reason?

A I didn't follow him that distance with the light on, sir.

Q I didn't ask you that.

MR. RUSS: Will you read the question back.

(Thereupon the Court Reporter read the last question. "Why did you allow that Cadillac to drive a half mile down Babcock before you pulled it over?")

A I just followed him to J. M. Fields parking lot, sir.

[157] Q Why didn't you stop him before that?
A I didn't.

Q I know that, I want to know why.
A I wanted to follow him and call in and tell them that I would be 10-50 at Fields parking lot and that's where we went.

Q Why didn't you stop him before then?
A I just didn't.

Q There is no reason for it?
A No reason.

Q You didn't consider his driving to be hazardous to other drivers?
A Not on Babcock, no, sir.

Q What you had seen went back to when he was up on U.S. 1?
A It could have been.

Q You didn't consider this driver to be hazardous to the safety of other people who might be on the road?

A No.

Q You didn't consider his driving might be dangerous to other cars on the road?

A There were no cars on the road.

Q You didn't consider this driving dangerous to any property that may be adjacent to the road?

A No, sir.

Q There was nothing about this driving that caused you to be in a great hurry to stop this Cadillac?

[158] A No, sir.

Q Does Babcock from Laurie to Ultcht run through a business section of Eau Gallie?

A The Babcock Plaza is there.

Q And this Cadillac drove properly by Babcock Plaza?

A Yes, sir.

Q Was there an opportunity there for the car to drive off of Babcock on to the parking lot?

A Yes.

Q Is there any place else besides Babcock Plaza that the car could have driven off of Babcock into a parking lot before Ultcht?

A At the Chips and the Gulf Station.

Q Let me ask you this, you have had training on how to search people before taking them in police vehicles?

A Yes, sir.

Q What has your training taught you about how to go about this?

A To search a subject I put him against my car, his hands on the car and his feet back and I pat down over his body down his pants, down his shoes and then I check the outside coat pockets.

Q Is that what you did in connection with James Gustafson?

A Yes, sir.

Q You followed that same technique?

[159] A Yes, sir.

Q You had him place himself against the car?

A Yes, sir.

Q He was kind of spread out so he would be propped up against the car with his hands—

A On the car.

Q His legs were spread apart?

A Yes.

Q After you searched him did you place him in your car?

A Yes, sir.

Q Immediately?

A Yes, sir.

* * *

[160] Q What did you tell Mr. Levy?

A I put Gustafson in my car and I told Levy to check Moody and see if he had a driver's license and to let him to drive the car back to the station.

Q Let who?
A Moody.

Q Did you get Moody out of the car?
A Moody got out of the car.

Q Before you put Gustafson in your car did you get Moody out of the car?
A Moody got out after I got Gustafson out.

• • •

Q Did you search Moody?
A Yes, sir.

Q Had you arrested him?
A No, sir.

Q Not for anything?
A I didn't arrest him for anything.

Q How about aiding and abetting a person driving without a valid license?
A I didn't arrest him.

[161] Q You did search him?
A Yes.

Q Did you place him against the car?
A I don't recall if I patted him down standing up or against the car.

Q You did pat him down?
A Yes.

Q You didn't go through his pockets?
A No, sir.

Q This was before you decided that he, Moody, was to drive the car down?
A Before?

Q Yes, sir.
A Not before, I put Gustafson in my car at that point. I opened the box of cigarettes.

Q We will get to that point, before you put Gustafson in your car you checked out Moody, searched him?
A No, sir, I had Gustafson in my car I put him in the back seat of the car.

Q And then you got out?
A I didn't get in, I put him in and walked around to Moody there.

Q And then you frisked him down?
A Right.

Q You then told Levy to tell Moody to drive the Cadillac [162] down to the station, is that right?
A Not after I frisked him, no, you are not letting me go through it.

Q And you know why, you can't tell it straight twice in a row, that is why. Where was Moody, did you tell Moody to drive the car to the station?
A I told Officer Levy to check and see if he had a license and let him drive it down.

Q Did you tell Moody to drive the Cadillac down?
A No, I didn't.

Q Where were you when you told Mr. Levy to check Moody's license and if he had one to allow him to drive the car down to the station?
A I had put Gustafson in the back seat of my car.

Q Was that before or after you searched Moody?
A That was before I searched Moody.

Q Did Levy report back to you that Mr. Moody had a license?
A He did not.

Q Did he state one way or the other?
A No, sir.

Q After you told Levy to check out Mr. Moody license, you then went and patted down Mr. Moody?
A No, sir, I did not.

Q Did you pat down Mr. Moody before or after telling Levy to check his license?
[163] A After I told Levy to check his license I patted down Moody.

Q At that point did you tell Mr. Moody and Levy for Mr. Moody to drive the car down to the station?
A No, sir, I didn't.

Q What did you tell Levy as to how the car was to get from the parking lot to the station?

A I told Levy after I put Gustafson in the car not to let Moody drive the car that I had marijuana and the car was locked up and the keys were in my pocket, put in my pocket.

Q When did you tell Mr. Levy to let Mr. Moody drive the car?

A Before I opened the cigarette that I had in my possession from Gustafson.

Q When in terms of putting Gustafson in the car did you tell Levy—

A I put him in the car and I opened the box.

Q I don't give a damn about when you opened the box, when did you tell Levy to check out Mr. Moody?

A I put Gustafson in my car—

Q It was at that point that you then looked in the box?

A I opened the box.

Q And there were rolled cigarettes that you thought were marijuana?

A Yes.

[164] Q And you got back out of your car?

A I was never in my car, I was at the back door.

Q You came away from your car?

A Yes.

Q And you told Mr. Levy, no, he can't drive the car?

A Not at that point.

Q You walked over to Mr. Moody and shoook him down?

A After I told him not to let him bring the car in.

Q I want you to tell me what you did immediately after you looked in the box that you had in your hand?

A Immediately after I told Levy don't let him get in the car?

Q What did you do immediately after that, after you got through saying this to Levy?

A I went around and searched Moody and put him in my car.

Q Did you have a search warrant for Moody?

A No, sir.

Q Was he under arrest?

A No, sir, I was taking him in for investigation.

Q For what?

A Possession of marijuana.

Q You have authority to take people in?

A Yes, sir.

Q You have authority to search them?

[165] Yes, sir.

Q A search incidental to investigation?

A Yes, sir.

Q Once Moody got out of the car and you searched him he never got back in the Cadillac?

A No, sir, he didn't.

Q He got out of the Cadillac about the same time that Mr. Gustafson got out?

A A little after Gustafson got out of the Cadillac he got out and came around.

Q Was Mr. Gustafson in custody for investigation of marijuana, too?

A Yes, sir.

Q And you took them both down to the station?

A Yes, I did.

Q Because you wanted to investigate the marijuana possession some more?

A Yes, sir.

Q You wanted to question them?

A I didn't want to question them, I turned them over to Lt. Mitchell.

Q So he could question them?

A Yes, sir.

Q Have you been to the Bureau of Narcotics School conducted by the United States Treasury Department in Washington?

[166] A No, sir.

Q Have you worked in the field of vice control?

A No, sir.

Q Do you feel that you are competent to identify marijuana when you see it in the sense of being an expert?

A In being an expert, no, sir, I am not an expert.

Q Is that why you contacted Lt. Mitchell so he could come and examine it?

Q Yes, sir.

Q And he did examine it?

A He did.

Q You were not absolutely sure that it was?

A It appeared to me to be marijuana.

Q But you were not absolutely sure?

A Not until he told me so.

Q Until Lt. Mitchell told you?

A No, sir, Mr. Gustafson.

Q Mr. Gustafson?

A Yes, sir.

Q Tell me about that.

A That's what I was getting to. As I put Gustafson in the back seat of the patrol car I opened the Benson-Hedges box and I said this appears to be marijuana to me and he looked at me and said, "It is."

Q At the time you placed him under arrest did you advise [167] him he had the right to remain silent?

A At the time, no, sir, I did not.

Q Did you tell him that anything he said while in custody could be used against him in a court of law?

A No, sir.

Q Did you advise him prior to making any statements that he had the right of legal counsel?

A I did not.

Q Did you advise him he had the right of legal counsel and if he was financially unable to obtain legal counsel that legal counsel would be provided for him without charge?

A I did not at the time of arrest.

Q Had you told him that prior to the time you looked at the contents of the Benson-Hedges box?

A No, sir.

Q Had you told him that prior to the time that you said it looked like marijuana to you?

A No, sir.

Q Had you told him that prior to the time he replied, "It is."

A No, sir.

Q Did you interrogate him any further from the shopping center to the station?

A No, sir.

Q Did you talk to him at all?

[168] A I don't believe so.

Q You didn't ask his name?

A No.

Q How old he was?

A No.

Q Where he lived?
A No.

Q Was Mr. Moody under arrest?
A I never did place him under arrest, no.

Q Let me ask you this, what would you have done if Mr. Moody refused to get in the police car?
A What would I have done?

Q Uh-huh.
A I wouldn't have done anything.

Q Would you have used force to get him in the police car?
A I never had arrested him, if he became belligerent I could have arrested him.

Q Would you have done so?
A Yes, sir.

Q And forced him to get into the police car?
A If he got belligerent.

Q You told me you searched him and told him to get in the police car?
A Yes, sir.

Q What would you have done if he said, "No, I am not going [169] to get into the police car."
A I would have probably have arrested him for disorderly conduct.

Q You feel that if a person refuses to do what a police officer tells you to do it constitutes disorderly conduct?

A Yes, sir.

Q You had the legal right to tell Mr. Moody to get into the police car?

A Yes, sir.

Q After you arrested him for disorderly conduct and he still refused to get into the police car what would you have done?

A I would have put him in the police car.

Q Forcibly?

A Yes, sir.

MR. RUSS: I have no further questions.

MR. CIENER: No questions.

FURTHER DEPONENT SAYETH NOT.

/s/ Paul R. Smith

(Court Reporter's sworn certificate dated 3/28/69 omitted in printing)

* * *

[171] IN THE COURT OF RECORD, IN AND FOR BREVARD COUNTY, FLORIDA

F69-33

STATE OF FLORIDA,

Plaintiff,

-vs-

JAMES GUSTAFSON,

Defendant,

[Filed April 22, 1969]

Transcript of the testimony held on March 10, 1969, at the Brevard County Branch Courthouse, Rockledge, Florida, before Judge Joe A. Cowart, Jr.

APPEARANCES:

MR. DAN CIENER, Assistant County Solicitor, in and for Brevard County, Florida, for the Plaintiff

MR. JAMES M. RUSS, Attorney at Law, 441 First Federal Building, Orlando, Florida, for the Defendant

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[178] THEREUPON,

PAUL R. SMITH,

was sworn and testified on his oath as follows:

DIRECT EXAMINATION

Q [By Mr. Ciener] State your full name.
A Paul R. Smith.

Q Mr. Smith, whom are you employed with?
A City of Eau Gallie.

THE COURT: Before you proceed let's get the record clear. Miss Reporter, if you will, let the record show this is the State versus James E. Gustafson, F69-33, Court of Record and that this is a hearing on the motion of the Defendant to suppress evidence obtained in an unlawful search and seizure and that the Court, in conference with counsel, indicated that since the allegedly seized evidence is not claimed to have been seized pursuant to the search warrant the Court has indicated the burden to come forward is on the State to show the property seized and to show a more factual basis for the search warrant and Mr. Ciener has acquiesced to come forth with it here.

Q [By Mr. Ciener] Lieutenant Smith, I'd like to first call your attention back to Sunday morning, approximately 2:00 a.m., the morning of January 12, 1969; were you so employed on that day as you are now?
A Yes.

[174] Q Do you know a person by the name of James Gustafson?

A Yes.

Q Do you see him here on this room?

A Yes [indicating].

MR. CIENER: Let the record reflect the witness identified the Defendant.

Q [By Mr. Ciener] Let me call your attention back to January 12, 1969, did you have occasion to meet him?

A Yes, I did.

Q Tell the Judge when you first met him and what happened.

A It was January 12th, approximately 2:00 a.m. in the morning and I was headed south on routine patrol on Harbor City Boulevard and I fell in behind a '53 white Cadillac, occupied by two males, weaving across the center here and back to the right side of the road. At the time both subjects looked back and spotted me and attempted to evade me by crossing US 1 behind Winn-Dixie and they headed south on Babcock Street.

Q How far was this from where you first observed the Defendant?

A I'd say a good half a mile.

Q You indicated he weaved how many times or in what manner did he do that?

[175] A Approximately four times.

Q You say there was somebody driving?
A Gustafson.

Q Then what happened?
A At that time I pulled them over at Ulcht and Babcock Street and I asked for his driver's license. At that time he stated to me that he didn't have his driver's license with him, that he had left it at home. At that time he was placed under arrest for no driver's license and by the patrol car he was searched. At that time a package of cigarettes was taken off him, a Benson and Hedges box out of the left outside pocket of his coat. At that time I opened it and it appeared there were marihuana cigarettes in the box. I had been shown this in training at the police department and these appeared to be marihuana to me. At that time I advised the Defendant that he could remain silent; he didn't have to say anything; that anything he said could and would be used against him in a court of law; that he was entitled to an attorney if he so desired —

Q Well, other than those statements by you, did you ask this Defendant anything? Did you interrogate him in any manner?
A No, sir.

Q What did you do with him?
A At that time I put him in the patrol car and he [176] was taken to the Police Department and turned over to Lieutenant Mitchell.

Q Did you ever give him a citation?
A Yes.

Q I just have a copy of the citation he was given.

MR. RUSS: May I see it?

THE COURT: Do you wish to produce it in evidence for the purpose of this hearing alone?

MR. CIENER: Yes, if he has no objection ti it.

MR. RUSS: I have no objection for the purpose of this hearing.

THE COURT: There being no objection I will mark these documents as Exhibit 1 for the limited purpose of this hearing, State's Exhibit 1 in the motion to suppress hearing.

Q [By Mr. Ciener] Let me show you this, Officer Smith. Do you recognize that?
A Yes, sir.

Q As what?
A Citation written by myself for no driver's license.

Q Written to the Defendant?
A Yes, sir.

Q And after he was placed in the patrol car he was taken where?
A To the Police Department, Detective Division:

[177] Q Was anyone there?
A Lieutenant Mitchell.

Q Now, where did the events you have testified to occur, physically occur?

A Occurred —

Q What city?

A Eau Gallie.

Q Florida?

A Yes.

Q Brevard County?

A Yes, sir.

MR. CIENER: Nothing further.

CROSS-EXAMINATION

Q [By Mr. Russ] Mr. Smith, what position did you have with the Police Department on this particular night in question?

A Lieutenant in Charge.

Q Did you wear a uniform?

A Yes, sir.

Q Did you have a marked patrol car?

A No, sir.

Q An unmarked car?

A Yes, sir.

Q Were you carrying a sidearm?

A Yes, sir.

[178] Q Were you wearing a badge?
A Yes, sir.

Q Were you wearing some sort of cap with an emblem on it?
A Yes, sir.

Q You were just out cruising around that night?
A Yes, sir.

* * *

Q And there was lots of traffic that night?
A No, sir, I believe traffic was slow that night.

[179] Q In the City of Eau Gallie?
A Yes, sir.

Q Is there a parking lane along the right side of the road there?
A Yes.

Q Were you in your car parked along the road?
A No, sir.

Q In fact, aren't there three lanes, one parking lane and two driving lanes?
A Yes, sir.

Q Now, was it the line dividing the two driving lanes that you observed the Cadillac weaving across?
A Yes, sir.

Q Three or four times?
A Yes, sir.

Q Before or after the occupants in the Cadillac turned around and saw you?

A I would say it was before.

Q Did you observe any further weaving after they observed you?

A No, sir.

Q You first observed the car approximately half a mile from the city limits?

A Yes, sir.

Q Did you make any effort to stop the car after it [180] weaved three or four times?

A No, sir, I didn't have a chance to.

Q At the time did you pull alongside the car?

A No, sir.

Q Did you observe this car as a danger to property on the highway during the course of these three or four weaves?

A No, sir.

Q Did you observe it to be a danger to any person during the course of these three our four weaves?

A No, sir.

Q Was it violating the speed laws?

A No, sir.

Q What was the speed limit there?

A Thirty-five.

Q How fast was the car going would you estimate?
A Between twenty and twenty-five.

Q The car was kind of raggedy looking?
A Yes, sir.

Q It was a 1953 model?
A Yes, sir.

Q What caused you to be suspicious about it, the persons in the car?
A No, sir.

Q When the two occupants turned around were you able to identify either of them?
[181] A At that time, no, sir.

Q You could see they were males?
A Yes, sir.

Q White males?
A Yes, sir.

Q Young white males you could see?
A Yes, sir.

Q Did they appear to be kind of hippies?
A No, sir, at that time I couldn't see them too plain.

Q Were you suspicious about the fact that here were two young white males out at 2:00 in the morning?
A No, sir.

Q Let me ask you this. They were going south on US 1 and after turning around and seeing you then you said they turned off US 1?

A Yes, sir.

Q And they drove in the shopping center?

A Behind the shopping center.

Q What road was back there?

A There was a driveway around the building.

Q Did it violate traffic laws to go around the bilding?

A No, sir.

Q Did they come out on Babcock Street?

[182] A Yes, sir.

Q Heading in the general direction of Melbourne?

A Yes, sir.

Q And then this was when you pulled them over?

A Yes, sir.

Q And had any laws, any traffic laws, been violated up until that point?

A Only weaving.

Q Other than that?

A No, sir.

Q Did you pull them over because of the weaving?

A Yes, sir.

Q And it was your intention to arrest the driver for some driving violation?

A No, sir, it was my intention to find out why he had been driving that way, if he had been drinking or something.

Q I see. When Mr. Gustafson gout out of the car did you detect an odor of alcohol about his person?

A No, sir.

Q Was there anything in his mannerisms that suggested he was intoxicated?

A He appeared to me to be intoxicated by his actions and the bleeriness of his eyes.

Q You detected no odor of alcohol?

A No, sir.

[183] Q There was light there, I assume?

A Yes, sir.

Q From what?

A Street lights.

Q And you had seen Mr. Gustafson before?

A Before that time, no, sir.

Q Where were you at this point?

A Standing right up close to him, talking to him.

Q Did you observe them stumble at all?

A No, sir.

Q Did you observe Mr. Gustafson weave?
A No, sir.

Q Did he have a slurred manner about his speech?
A No, sir, he didn't.

Q You asked him for his driver's license?
A Yes, sir.

Q And he told you he did not have in his possession, is that true?
A Yes, sir.

Q He, in fact, did tell you he had a valid driver's license but it was not with him?
A Right.

Q Did you arrest him for driving while under the influence?
A No, sir.

[184] Q Did you arrest him for weaving on the highway
A No, sir.

Q Because he didn't have a driver's license in his possession?
A Yes, sir.

Q He told you he had a driver's license but not in his possession?
A Yes, sir.

Q A charge of no driver's license was made by you?
A Yes, sir.

Q This case was then dismissed, nol-prossed, in the Eau Gallie City Court?
A Yes, sir.

Q Because a valid driver's license was produced, was it not?
A Yes, sir.

Q You issue a number of traffic citations, do you not?
A Yes, sir, quite a few.

Q How many in a week's time?
A Eight or ten a week.

Q And you issue a number of them for not having a valid driver's license in their possession?
A It is general practice to stop a man and if he hasn't got a valid driver's licence I give him a citation.

[185] Q Do you take them down to the Police Station?
A Yes, sir.

Q In every instance?
A No, not in every instance.

Q How often out of, say ten cases?
A Maybe three or four.

Q Three or four out of ten?
A Yes, sir.

Q Do you require them to post bail?
A Some of the, yes, sir.

Q Did you set the bail in this case here?
A Yes, sir.

Q In the amount of $50?
A Yes, sir.

Q Now, when you talked to Mr. Gustafson out there on Babcock Street did he tell you he was a student?
A Yes, sir.

Q He went to the Florida Institute of Technology?
A Yes, sir.

Q And he had been in Brevard County for — this was his second academic year?
A Yes, sir.

Q He told you he lived in a campus dormitory?
A Yes, sir.

Q He told you that he owned a 1953 Cadillac automobile?
[186] A He did.

Q He also told you he didn't have the registration papers with him?
A Yes, sir.

Q He told you he had just bought the car and the papers hadn't cleared?
A No, sir.

Q Did you verify this?
A No, sir.

Q Then you thought that was the truth?
A Yes, sir.

Q Now, were you suspicious of these two young men merely because they drove around the back of the shopping center?
A No, sir, weaving down the road.

Q Three or four weaves?
A Yes, sir.

Q Well, in this weaving he went from the driving lane going south left about how much?
A About half of the lane, maybe.

Q Well, are you sure?
A No, I'm not sure.

Q You are not sure?
A No, sir.

Q Would it be reasonable to say it was simply a [187] matter of the left wheels going over the line?
A Yes.

Q He probably just straddled the line?
A Yes.

Q To your knowledge is this a criminal violation?
A Yes, sir, It could constitute careless driving.

Q There was no other traffice on the road except you and the Cadillac, is this true?
A Yes, sir.

Q Were you suspicious when the car drove off behind the shopping center?
A Was I suspicious?

Q Yes.
A No, sir, I planned to stop them.

Q You planned to stop them?
A Yes, sir.

Q Because of the weaving?
A Yes, sir.

Q Well, tell the Judge — you stopped them but you didn't charge him with any kind of traffic violation, did you?
A No, sir, I did not.

Q You arrested him — you said, "You're under arrest because you don't have a driver's license?
A Yes, sir.

Q Then you said, "Let me search you," or some words [188] to that effect?
A Yes — no, sir, I didn't say, "Let me search you." I always search them before I put them in the patrol car.

Q Sort of patting down on the sides?
A Yes, sir.

Q And even going into the pockets?
A Yes, sir.

Q Was he standing up against the car, with his arms up against the car?
A Yes, sir.

Q You took everything out of the pockets?
A Not everything, no, sir.

Q Did you take his wallet?
A No, sir.

Q You did take his cigarette box?
A Yes, sir, I did.

Q Handkerchief?
A No, sir.

Q Comb?
A No, sir.

Q What else did you take besides the package of cigarettes out of his pocket out there at the scene when you were going through the search?
A A little long chain, about this long.

Q How about the change in his pockets?
[189] A No, sir.

Q Did you take the keys out of his pockets?
A The keys were in the car.

Q Did you take his glasses?
A No, sir.

Q Do you remember taking anything out of his pockets except the cigarette package and a little chain?
A Only the chain.

Q If I didn't have a driver's license and you stopped me and decided to give me a citation doesn't this ordinarily mean that I would come back to Court on a certain day?
A Yes, sir.

Q Then you are really released on your word?
A If you live in the City Limits of Eau Gallie.

Q And if I don't?
A In some instances if they live outside.

Q Well, you learned from Mr. Gustafson that he lived in the City of Melbourne?
A Yes, sir.

Q Melbourne and Eau Gallie have common city limits?
A Yes, sir.

Q But back to my case. If you give me a citation and you decide not to require me to post bail and you released me just on my own good word you wouldn't search me, would you?
[190] A If you were released, no, sir.

Q I would just go on my way with a piece of paper in my hand?

A Yes, sir.

Q When you actually make an arrest you then search the individual prior to putting him into your car, is that right?

A Yes, sir.

Q Did you stop any other cars that night?

A Sir, I don't recall if I stopped any more.

Q How long had you been out cruising around?

A Since 11:00.

Q This is about two and a half hours?

A Yes, sir.

Q And you were cruising all over the City of Eau Gallie?

A Yes, sir.

Q And there were no police markings on your car whatsoever?

A Nothing but the antenna.

Q Did you ever turn on your flashing light?

A Yes, sir, I did.

Q Where was that?

A Babcock Street.

Q Did he come to a stop when you turned the light on

[191] A He stopped the car at the entrance to J. M. Fields parking lot.

Q There was an immediate response to the flashing light?
A Yes, sir.

MR. RUSS: No other questions.

MR. CIENER: Nothing further.

Q [By the Court] Officer, I don't believe either of the attorneys asked you a question I want to ask you. You did say that it was the weaving you had on your mind when you stopped them?
A Yes, sir.

Q That you felt they had broken the law?
A Yes, sir.

Q A City Ordinance of Eau Gallie?
A Yes, sir.

Q What was that?
A Careless driving by weaving.

Q Why didn't you arrest him on that then?
A At that point I didn't feel he had weaved enough to arrest him for careless driving.

THE COURT: Any further questions?

MR. RUSS: No, sir. Mr. Ciener?

MR. CIENER: Nothing.

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